

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JUN 17 2005

Federal Communications Commission
 Office of Secretary

In the Matter of:)
)
 Request for Expedited Declaratory)
 Ruling Concerning the Territorial) MB Docket No. 04-75
 Exclusivity Rule, Section 73.658(b))
 of the Commission's Rules)
)

JOINT MOTION FOR EXPEDITED ISSUANCE OF ORDERS TO SHOW CAUSE

Max Media of Montana LLC ("Max Media"), by its attorneys, and Destiny Licenses, LLC ("Destiny"), by its attorneys, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. § 312(c), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby move for the issuance of Orders to Show Cause why: (a) the licenses of television broadcast stations KBAO, Lewistown, Montana; KBBJ, Havre, Montana; KJWY, Jackson Hole, Wyoming; KSWY, Sheridan, Wyoming; KCWY, Casper, Wyoming; and KTVH, Helena, Montana should not be revoked for willful violation of Section 73.658(b) of the Commission's Rules, 47 C.F.R. § 73.658(b); and (b) Orders to Cease and Desist from all conduct by these licensees, their parents, subsidiaries and affiliates, and by NBC Universal ("NBC"), in violation of, and in furtherance of the violation of, Section 73.658(b) should not be issued. In a separate pleading, Max Media and Destiny have jointly opposed the Renewed Motion of Sunbelt Communications Company to Terminate Proceeding, filed by Sunbelt Communications Company ("Sunbelt") on June 14, 2005.

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 List ABOVE

I. SUNBELT'S VIOLATION OF THE NETWORK TERRITORIAL EXCLUSIVITY RULE IS ESTABLISHED BY UNCONTROVERTED FACTS IN THE RECORD

On February 25, 2004, Max Media filed a Request for Expedited Declaratory Ruling in the above-referenced proceeding. *See* Public Notice DA 04-747 (March 19, 2004). Subsequently, the Commission sought and received Comments and Reply Comments from the public. In addition, the Commission has received multiple *ex parte* presentations and submissions, and two motions from Sunbelt requesting that this proceeding be terminated. In sum, the Commission now has a full and complete record before it regarding the subject matter at issue, the violation of the network territorial exclusivity rule, 47 C.F.R. § 73.658(b), by Sunbelt.

A Declaratory Ruling resolving uncertainty about Section 73.658(b) would serve the public interest.¹ However, the elements of *prima facie* violation of the network territorial exclusivity rule are present in the facts now before the Commission. In light of these facts, the public interest requires the Commission to move forward to commence enforcement of the rule expeditiously. Section 73.658(b) requires a showing of: (1) a television broadcasting station having any contract, arrangement, or understanding, express or implied with a network organization; and (2) where the contract, arrangement or understanding prevents or hinders a broadcast station located in a different community from broadcasting any program of the network organization. There is sufficient evidence of both elements in the record.

Among other things, the record includes an undisputed letter dated April 26, 1999, from NBC to Sunbelt ("NBC Letter") with the final paragraph stating:

¹ The meaning of Section 73.658(b) and the *Scripps Howard* precedent should be clarified in accordance with the arguments set forth in Section II of this Motion.

Sixth: NBC had made a decision that it will not renew its affiliation agreement with Channel 16 in Great Falls, Montana. That agreement will not expire until July 2005. It is NBC's ***understanding that if NBC does not renew that agreement***, Beartooth Communications Company, the NBC affiliate in Helena, Montana, will establish a news bureau in Great Falls that would make KTVH in Helena competitive with the present ABC and CBS stations in Great Falls. It is NBC's further understanding that the signal from Channel 12 in Helena is either now or will be adequate to cover the Great Falls area so there will be no substantial reduction in viewership of NBC programming in the Great Falls DMA. Channel 12 in Helena, with the added coverage of Channel 2 in Havre and Channel 13 in Lewistown, will serve to further cover the Great Falls DMA presently covered by Channel 16 in Great Falls. [Emphasis added.]

This evidence is uncontroverted. The authenticity of the letter is undisputed.

Neither NBC, nor Sunbelt, has produced any objective evidence – either testimonial or documentary – of an independent business-judgment basis for NBC's decision to terminate its affiliation agreement with Channel 16 in Great Falls, Montana.² Neither party has produced any correspondence previous to, or subsequent to, the NBC Letter to change the letter's apparent meaning. The apparent meaning of the NBC letter is that Sunbelt bargained for expanded territorial exclusivity for station KTVH, Helena, Montana, to include the community of Great Falls. That expanded territorial exclusivity required the termination of the NBC affiliation with station KTGF(TV), Great Falls, Montana, in violation of Section 73.658(b).

While the first sentence in the paragraph indicates that NBC's decision not to renew KTGF(TV)'s affiliation was made prior to the NBC Letter, there is no basis to assume that

² The record includes evidence that Max Media was never notified by NBC of any material deficiencies in its performance as an NBC affiliate. On May 20, 2005, Max Media supplemented the record of this proceeding with evidence that Continental, the former licensee of KTGF(TV) (at the time of the 1999 NBC Letter) had no knowledge of NBC's intention to terminate KTGF(TV)'s affiliation at the time Max Media acquired the station.

decision was independent of the understanding with Sunbelt. In fact, a subsequent sentence clearly makes NBC's decision *conditional* upon an “. . . *understanding that if NBC does not renew that agreement,*” Beartooth Communications Company, the NBC affiliate in Helena, Montana, would perform in certain ways in exchange for the right to cover the Great Falls DMA with NBC programming, thereby expanding its network territory at the expense of KTGF(TV). The NBC Letter to Sunbelt, when read in the context of the entire record of this proceeding, is sufficient evidence to warrant the issuance of an order to show cause why the licenses of KBAO(TV), Lewistown, Montana, KBBJ(TV), Havre, Montana, KJWY(TV), Jackson, Wyoming, KSWY(TV), Sheridan, Wyoming, KCWY(TV), Casper, Wyoming, and KTVH(TV), Helena, Montana (referenced in the NBC Letter) should not be revoked for violating the Commission's network territorial exclusivity rule.

II. SUNBELT'S ELEVENTH-HOUR AND FLAWED ATTEMPT TO CURE THE VIOLATION DOES NOT EXCUSE THE PROHIBITED CONDUCT

Sunbelt has concocted a flawed, eleventh-hour strategy to attempt a cure for its violation of Section 73.658(b). On April 21, 2005, Beartooth Communications Company (“Beartooth”), a subsidiary of Sunbelt, acquired a Low Power Television (“LPTV”) construction permit for K50IQ (renamed KBGF-LP). *See* File No. BAPTTL-20050307ACC. This LPTV station is to be constructed with reduced facilities pursuant to an STA (*see* File No. BSTA-20050513ADP) and co-located with a translator of station KTVH, Helena, Montana (*see* File No. BNPTTL-20000829AHF). Beartooth and NBC have entered into a “new” network affiliation agreement for the community of Great Falls, effective July 1, 2005. *See Ex Parte* Submission of Destiny dated June 14, 2005 (copy attached as Exhibit A). Sunbelt now unconvincingly asserts that its subsequent acquisition of an LPTV station licensed to Great Falls should cure its violation of the network territorial exclusivity rule because an LPTV station should constitute a

“broadcast station” licensed to the community of Great Falls, Montana, sufficient to bring this case within the *Scripps Howard* precedent. (See Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995).

Max Media has set forth the many compelling reasons why as a matter of sound policy the Commission should not construe LPTV stations to be “broadcast stations” for purposes of the protections of Section 73.658(b) and the exception created by the FCC staff in the *Scripps Howard* precedent. See *Ex Parte* Submission of Max Media dated June 10, 2005 (copy attached as Exhibit B). In addition, as a policy matter, the Commission should not indulge the concept that licensees will be permitted to engage in unlawful conduct, if they can subsequently find a cure.

The temporal sequence of events is very significant because the network territorial exclusivity rule was, and is, intended to *prevent* anti-competitive conduct. If the Commission permits licensees to engage in violate-then-seek-a-cure conduct such as Sunbelt urges, then the preventative nature of the rule will be destroyed. Local markets will be disrupted by uncertainty. Harms that cannot be cured will result. The public interest will suffer to the detriment of licensees, their viewers and advertisers.

The facts constituting the violation have their roots in 1999. That is when it is apparent that an arrangement involving the termination of KTGF(TV)’s NBC affiliation agreement existed between Sunbelt and NBC. At that time, Sunbelt did not own any broadcast station licensed to the community of Great Falls, Montana.

Moreover, it is significant that the *Scripps Howard* precedent did not depart from the policy of preventing undesired licensee conduct. The facts of the *Scripps Howard* case involved the shifting of network affiliations among stations licensed to the same community, but

the network affiliation went to a station *in existence at the time of the understanding and that was then owned by the licensee accused* of the violation. The facts of this case are materially different because Sunbelt did not own any station licensed to the community of Great Falls.

III. ISSUANCE OF CEASE AND DESIST ORDERS AGAINST SUNBELT AND NBC ARE WARRANTED

Section 312(b) of the Communications Act provides that where a person has violated the Communications Act or the Rules, the Commission may order that person to cease and desist from such action. Thus, issuance of Cease and Desist Orders in this case is warranted if the Commission determines that its network territorial exclusivity rule has been violated. Sunbelt's violation of the rule has become open and notorious since this proceeding commenced, and the violation has continued throughout this proceeding. Accordingly, until such time as Sunbelt's broadcast station licenses are revoked for violation of the rule, Sunbelt should be ordered to cease and desist from any present or future conduct in violation of, or in furtherance of the violation of, Section 73.658(b), including but not limited to current or future affiliations, arrangements, understandings, or agreements, express or implied, with the NBC television network, which permit, or would permit in the future, the distribution of the network's programming by Sunbelt, its subsidiaries or affiliates, in the community of Great Falls, Montana, or which prevents any other broadcast station licensed to the community of Great Falls from airing the network's programs.

In addition, NBC should be ordered to cease and desist from all conduct present and future in furtherance of Sunbelt's violation of Section 73.658(b). Section 73.658(b) explicitly sanctions station licensees for prohibited conduct with network organizations. However, the clear meaning of the rule is to prohibit network conduct in violation of the rule also. No violation of the rule by any station licensee could occur without the participation of a

network organization. Therefore, network organizations participating in a station licensee's violation of the rule should not escape the Commission's enforcement authority.

The scope of the requested Cease and Desist Orders is within the Commission's statutory authority. Section 312(b) provides:

Where any **person** (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such **person** to cease and desist from such action.

47 U.S.C. §312(b). [Emphasis added.] Congress expressly provided the Commission with more expansive jurisdiction regarding Cease and Desist Orders than in other portions of the statute.

Section 312(b) explicitly confers jurisdiction over "persons" to the Commission, as distinct from the more restrictive jurisdiction over licensees in Section 312(a).

The scope of the requested Cease and Desist Orders is consistent with Commission precedent.³ *See Cease and Desist Order Against Terrance R. Noonan and Order to Show Cause Why The License for Radio Station KFJ- 7748 in the Citizens Radio Service Should Not Be Revoked*, 67 FCC 2d 62 (December 30, 1977). In that case, the Commission adopted and applied the reasoning of the Supreme Court in NLRB v. Express Publishing Co., 312 U.S. 426 (1941) involving a cease and desist provision in the National Labor Relations Act that is very similar to Section 312(b) of the Communications Act. The Commission reasoned that the breadth of a cease and desist order issued by the FCC, like the injunction of a court, must

³ Section 312(b) authorizes the Commission to prohibit unlawful acts, so long as the prohibited conduct is persuasively related to that misconduct which occurred in the past. *See Cease and Desist Order Against Terrance R. Noonan and Order to Show Cause Why The License for Radio Station KFJ- 7748 in the Citizens Radio Service Should Not Be Revoked*, 67 FCC 2d 62 (December 30, 1977).

“depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which ... [have been] found to have been committed in the past.”⁴ Nothing in the Communications Act or the legislative history of Section 312 suggests that such an order may not be issued in conjunction with an order of revocation.

IV. CONCLUSION

The facts before the Commission establish a violation of Section 73.658(b) by Sunbelt in cooperation with NBC. For the reasons set forth above, and in the pleadings and *ex parte* submissions of Max Media and Destiny in this proceeding, the Commission should clarify the meaning of Section 73.658(b) by rejecting Sunbelt’s flawed attempt to cure the rule violation using an LPTV station, and the Commission should adopt the following:

1. An Order to Show Cause Why the Licenses of Television Broadcast Stations KBAO, Lewistown, Montana; KBBJ, Havre, Montana; KJWY, Jackson Hole, Wyoming; KSWY, Sheridan, Wyoming; KCWY, Casper, Wyoming; and KTVH, Helena, Montana Should Not Be Revoked for Violation of Section 73. 658(b) of the Commission’s Rule;
2. An Order to Show Cause Why Sunbelt, Its Subsidiaries and Affiliates, Should Not Be Ordered to Cease and Desist From Any Present or Future Conduct in Violation of, or in Furtherance of the Violation of, Section 73.658(b), including but not limited to current or future affiliations, arrangements, understandings, or agreements,

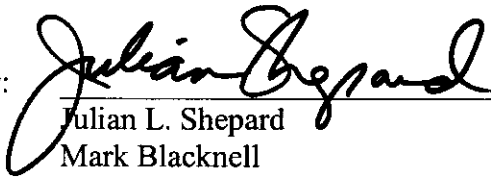
⁴ To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past. 312 U.S. 426 at 436-37.

express or implied, with the NBC television network, which permit, or would permit in the future, the distribution of the network's programming by Sunbelt, its subsidiaries or affiliates, in the community of Great Falls, Montana, or which prevents any other broadcast station licensed to the community of Great Falls from airing the network's programs; and


3. An Order to Show Cause why NBC Universal Not Be Ordered to Cease and Desist From All Conduct Present and Future in Furtherance of Sunbelt's Violation of Section 73.658(b).

Respectfully submitted,

MAX MEDIA OF MONTANA LLC

By: 
Julian L. Shepard
Mark Blacknell
Williams Mullen
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(202) 293-8111
Its Attorneys

DESTINY LICENSES, LLC

By:  (JS)
Erwin Krasnow
Garvey Schubert Barer
1000 Potomac Street, NW
Fifth Floor
Washington, DC 20007-3501
(202) 298-2161

June 17, 2005

CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 17th day of June, 2005, a copy of the foregoing "Joint Motion for Expedited Issuance of Orders to Show Cause" was served by first class United States mail, postage prepaid, addressed to:

Thomas J. Hutton, Esq.
Uhlmann/Latshaw Broadcasting LLC
5823 Potomac Avenue, N.W.
Washington, DC

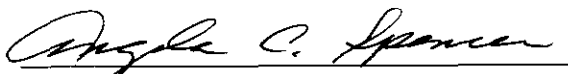
F. William LeBeau, Esq.
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Washington, DC 20004-1109

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Senior Vice President – Affiliate Relations
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Please reply to ERWIN G. KRASNOW
ekrasnow@gsblaw.com TEL EXT 2161

June 14, 2005

Our File No. 21757-00100

DELIVERED BY HAND

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204-C
Washington, DC 20554

Re: Ex Parte Submission in MB Docket No. 04-75

Dear Ms. Dortch:

On behalf of Destiny Licenses, LLC, licensee of Station KTGF-TV, Great Falls, Montana, there is submitted herewith, for inclusion in the record of this proceeding, the enclosed "Amendment to Affiliation Agreement regarding KBGP-LP (Great Falls, Montana)." This newly discovered document provides that **effective July 1, 2005**, low power television station KBGP-LP, Great Falls, Montana, will be an affiliate of the NBC Television Network.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Roy J. Stewart, William H. Johnson, Robert H. Ratcliffe, John B. Norton and Jane Gross. In addition, a copy of this letter, with attachment, has been served on all the parties of record in this proceeding.

Respectfully submitted,

Erwin G. Krasnow

EGK:ar
Attachment

cc: Roy H. Stewart
William H. Johnson
Robert H. Ratcliffe
John B. Norton
Jane Gross

30 Rockefeller Place
New York, NY 10112
212 664-4444

A Division of
National Broadcasting
Company, Inc.



As of July 1, 2005

Sunbelt Communications Company
1500 Formaster Lane
Las Vegas, Nevada 89101
("Group")

Beartooth Communications Company
13 Sixth Street South
Great Falls, Montana 59401
("KBGF-LP Licensee")

The Licensees set forth on
Schedule I hereto
(together with KBGF-LP Licensee, the "Licensees")

Re: Amendment to Affiliation Agreement regarding
KBGF-LP (Great Falls, Montana)

Ladies and Gentlemen:

Reference is made to the affiliation agreement and the side letter, each dated as of January 1, 2001, among NBC Television Network ("NBC"), Group and the Licensees which are signatories thereto (collectively, the "Affiliation Agreement"). All capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Affiliation Agreement.

Notwithstanding anything to the contrary in the Affiliation Agreement, the parties hereto wish to amend the Affiliation Agreement as follows:

1. Effective as of July 1, 2005, the Affiliation Agreement shall add KBGF-LP as a Station and KBGF-LP Licensee as a Licensee.
2. KBGF-LP Licensee hereby agrees to comply with all of the terms of the Affiliation Agreement, as if KBGF-LP were a signatory thereof.
3. Payments
 - (a) NBC Payments: NBC shall have no obligation to pay KBGF-LP or Group any amount of money in connection with KBGF-LP's affiliation as a affiliate station.

(b) Affiliation Payments. In consideration of NBC entering into this Agreement, and notwithstanding termination of this Agreement with respect to any Station, Group shall pay NBC the amounts set forth on Schedule II attached hereto for the years set forth therein (the "Affiliation Payments") for KBGF-LP, payable quarterly in arrears, with the first payment due by April 1, 2006 by electronic transfer or such other means as NBC shall determine.

Except as expressly set forth herein, the terms and provisions of the Affiliation Agreement are hereby ratified and confirmed.

If the foregoing is in accordance with your understanding, please indicate your acceptance on the copy of this Agreement enclosed for that purpose and return that copy to NBC.

Very truly yours,

NBC TELEVISION NETWORK

By: Jean M. Dietze
Name: Jean Dietze
Title: Vice President, Affiliate Relations

AGREED:
SUNBELT COMMUNICATIONS COMPANY
By: [Signature]
Name: Ralph Toddre
Title: President/Chief Operating Officer

VALLEY BROADCASTING COMPANY
(as licensee for KBVC)
By: [Signature]
Name: Ralph Toddre
Title: President/Chief Operating Officer

YUMA BROADCASTING COMPANY
(as licensee for KVMH)

By: 

Name: Ralph Rodden



G A R V E Y S C H U B E R T B A R E R

CERTIFICATE OF SERVICE

I, Anne Rutherford, do hereby certify that on this 14th day of June, 2005, a copy of the foregoing "Ex Parte Submission in MB Docket No. 04-75", was served by first class United State mail, postage prepaid, addressed to:

Thomas J. Hutton, Esq.
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Alan C. Campbell, Esq.
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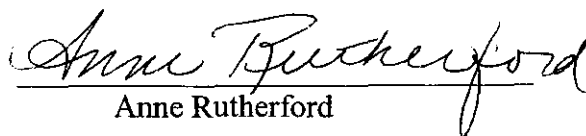

Anne Rutherford

EXHIBIT B



PLEASE DATE-STAMP
AND RETURN

WILLIAMS MULLEN

Direct Dial: 202.293.8111
jshepard@williamsmullen.com

June 10, 2005

BY HAND DELIVERY

RECEIVED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

JUN 10 2005

Federal Communications Commission
Office of Secretary

Re: Notice of Oral *Ex Parte* Presentations – Request for
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On June 8, 2005, the undersigned, counsel to Max Media of Montana LLC (“Max Media”), and Erwin G. Krasnow, Esq., Garvey Schubert Barer, counsel to Destiny Licenses, LLC (“Destiny”), met with the staff of the Media Bureau, including Messrs. Roy J. Stewart, Senior Deputy Bureau Chief; William H. Johnson, Deputy Bureau Chief; Robert H. Ratcliffe, Deputy Bureau Chief; John B. Norton, Deputy Chief of the Policy Division; and Ms. Jane Gross regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004).

The representatives of Max Media and Destiny reiterated the positions set forth in their pleadings in this proceeding and countered the argument that if low-power television station (“LPTV”) KBGF-LP, Great Falls, Montana, carries NBC programming, the issue of a network territorial exclusivity rule violation would be moot. The STA recently granted to Beartooth Communications to operate KBGF-TV at reduced facilities (File No. BSTA-20050513ADP) on a co-located basis with one of KTVH’s translators (Channel 51), only *sharpens* the reasons for not equating KBGF-LP with KTGF(TV) for the purposes of Section 73.658(b). In addition, the KTVH translator is not a broadcast station licensed to the community of Great Falls for purposes of the network territorial exclusivity rule. It is an extension of KTVH, Helena, Montana.

Under these circumstances, KBGF-LP should not be considered a “broadcast station” in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent (see Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995)). In a previous *ex parte* submission, Max Media and Destiny distinguished the case where the network organization is switching affiliations among stations licensed to the same community, *i.e.*, the *Scripps Howard* precedent, from this case where a station has tried to cure its violation of the network territorial exclusivity rule with an eleventh-hour acquisition of a low-power television station in the protected community, *i.e.*, Great Falls, Montana. See Letter to FCC Secretary dated June 3, 2005.

A Professional Corporation

VIRGINIA • WASHINGTON, D.C. • LONDON

1666 K Street, N.W., Suite 1200 Washington, D.C. 20006 Tel: 202.833.9200 Fax: 804.783.6507 or 202.293.5939
www.williamsmullen.com



WILLIAMS MULLEN

Ms. Marlene H. Dortch

June 10, 2005

Page 2

The representatives of Max Media and Destiny argued that the public record of this proceeding has been open for more than one year. During that time, no party, including Sunbelt and NBC, has adduced any objective evidence, documentary or testamentary in nature, to substantiate the naked and self-serving assertion that NBC exercised independent business judgment in its 1999 decision to terminate its affiliation with station KTGF(TV). Furthermore, there appears to be no legitimate basis for NBC to abandon broadcast distribution of its signal in the community of Great Falls rather than maintaining an established NBC affiliate, KTGF(TV). If the cost of the affiliation were an issue, one would reasonably expect NBC to negotiate with the affiliate over network compensation. No such negotiations have occurred.

NBC cannot legitimately claim that it can achieve comparable distribution of its programming by other means. NBC simply cannot replicate the coverage of KTGF(TV), complete with local programming, even if it relies on program delivery to Great Falls via a combination of KBGF-LP, cable systems, and satellite service. Local news programming is a major factor in determining the viewership of prime-time network programming. The absence of local news would diminish the value of network program distribution to any local market.

By replacing KTGF(TV) with KBGF-LP for over-the-air delivery of NBC programming, NBC would lose broadcast coverage to more than an estimated 16,338 over-the-air viewers. In addition, substantial number of the viewers without broadcast reception would be in rural portions of Great Falls, where cable systems reach fewer homes. Therefore, only a fraction of those viewers losing free over-the-air service will actually be able to turn to cable for local NBC programming. DMA-wide cable penetration in Great Falls is only 56% (Nielsen, February 2005), far below the national average. Finally, with respect to NBC's reach via satellite, it is important to note that DBS penetration in the Great Falls DMA is only 30 % (Nielsen, February 2005), and neither DirecTV nor EchoStar offer local-into-local service in Great Falls. Thus, former KTGF(TV) viewers forced to rely on cable or DBS would be receiving out-of-market NBC programming without local news and local programming.

Finally, Destiny's attempts to renew the affiliation for KTGF(TV) after Destiny consummated the acquisition resulted in statements from NBC officials wholly inconsistent with a picture of NBC exercising independent business judgment. To supplement the record of this proceeding on this point, attached is a Supplemental Declaration of Darnell Washington, in which he explains what he was told by NBC officials when he inquired about the possibility of renewing KTGF(TV)'s network affiliation agreement. The relationship between NBC and Sunbelt appears to be the driving force behind NBC's business judgment. Accordingly, NBC's business judgment was not independent.

The representatives of Max Media and Destiny advocated the issuance of an Order to Show Cause why the licenses of all six stations under common ownership by Sunbelt that were mentioned or referred to in the 1999 letter from NBC to James Rogers should not be revoked for the violation of the Section 73.658(b) of the Commission's rules. Pursuant to Section 1.1206(b) of the



WILLIAMS MULLEN

Ms. Marlene H. Dortch

June 10, 2005

Page 3

Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Messrs. Stewart, Johnson, Ratcliffe, Norton and Ms. Gross. In addition, a copy of this letter, with attachment, has been served on all parties of record to this proceeding.

Respectfully submitted,



Julian L. Shepard

Attachment

cc: Roy H. Stewart
William H. Johnson
Robert H. Ratcliffe
John B. Norton
Jane Gross

DECLARATION OF DARNELL WASHINGTON

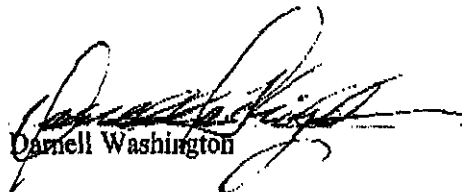
Under penalty of perjury, I, Darnell Washington, hereby declare that:

1. I am the President of Destiny Communications, LLC. ("Destiny") the parent entity of the licensee of KTGF(TV), Great Falls, Montana. I have personal knowledge of the following facts, except where noted.

2. On February 23, 2005, I met with John Damiano, Executive Vice President of Affiliate Relations for NBC Universal, Inc ("NBC") at NBC's corporate headquarters, located at 30 Rockefeller Plaza, New York, New York. We met to discuss the status of KTGF(TV)'s affiliation with NBC. I explained the strengths of Destiny as a new affiliate, and asked what Destiny could do to secure the renewal of KTGF(TV)'s affiliation. Mr. Damiano stated that "we would love to work with you on other NBC stations." He further explained that, because of a "personal relationship between Jim Rogers and Bob Wright, there is no chance of turning it around." Thus, it became obvious to me that the decision to terminate KTGF(TV)'s affiliation was not independent of the personal relationship between the Jim Rogers and Bob Wright.

3. My understanding was further confirmed on March 30, 2005, when I approached Bob Wright during a break at an NBC affiliates meeting in New York, New York. I introduced myself to Mr. Wright and asked him whether NBC would reconsider its decision to terminate KTGF(TV)'s affiliation. In response, Mr. Wright stated that "NBC has a long term relationship with Sunbelt, and I have a long-standing relationship with Jim Rogers, and there is no chance of changing the decision."

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 10, 2005.


Darnell Washington

CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 10th day of June, 2005, a copy of the foregoing "Notice of Ex Parte Oral Presentations – Request for Expedited Declaratory Ruling (MB Docket No. 04-75)" was served by first class United States mail, postage prepaid, addressed to:

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